Local 701, International Brotherhood of Electrical Workers *and* The University of Chicago d/b/a Argonne National Laboratory and Lodge No. 2458, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 13-CD-284

April 23, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by The University of Chicago d/b/a Argonne National Laboratory, herein called the Employer or Argonne, alleging that Local 701, International Brotherhood of Electrical Workers, herein called the Electrical Workers, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Lodge No. 2458, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Machinists.

Pursuant to notice, a hearing was held before Hearing Officer Edward D. Klaeren on November 24 and December 2, 4, 5, and 9, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The Employer is an Illinois nonprofit corporation operating as a unit of The University of Chicago, a private educational institution. It is located in Argonne, Illinois. Most of Argonne's funds are provided under a contractual agreement between The University of Chicago and the United States Government acting through the Department of Energy (hereinafter DOE). Under the terms of this contract, The University of Chicago operates Argonne for the purpose of engaging in experimental testing of various types, including work with atomic particles and other radioactive materials. In the last 12 months, Argonne had revenues in excess of $2 million and it purchased and received materials in excess of $50,000 from points outside the State of Illinois.

At the hearing, the Electrical Workers moved to dismiss the charge in this proceeding, arguing that the Board lacks jurisdiction under Section 2(1) and (2) of the Act. It contends that the United States Department of Labor (hereinafter DOL) and DOE, which are exempted from the Act's coverage pursuant to Section 2(2) therof, are necessary parties to this dispute and therefore, without joining them as parties to the instant dispute, the Board is precluded from making a determination in the instant case. The Electrical Workers further argues that if the National Labor Relations Board asserts jurisdiction here it will exceed its delegated powers in that it will deprive employees of a right granted to them by Congress to receive an area standards wage pursuant to the Davis-Bacon Act.[1] Finally, it argues that due process will be denied because the Board's determination would be based upon evidence adduced at a hearing at which necessary parties to the dispute were not present and were not afforded the opportunity to participate fully.

The evidence shows that, under its contract with DOE, Argonne submits proposals to DOE and DOE authorizes Argonne to proceed on a proposal-by-proposal basis. DOE reimburses Argonne for certain expenses, including wages and the cost of employee benefit plans. DOE does not have input with regard to the hiring, discharging, layoff, recall, or work assignments of employees. DOE neither participates in Argonne's collective-bargaining negotiations nor has input into decisions made during the utilization of the grievance procedure by Argonne employees. DOE approves any major changes in employee benefits and has veto power on cost reimbursements to Argonne under its benefit plans. Article XXIV, paragraph 24.5, of the contractual agreement between DOE and Argonne refers to work covered by the Davis-Bacon Act and provides as follows:

> The University and ERDA [now DOE] have agreed upon a procedure under which ERDA will determine when work to be undertaken at the Laboratory Facilities [Argonne] is covered by the Davis-Bacon Act. When it is determined that the Davis-Bacon Act does cover a particular work project the University shall procure by subcontract the covered work. Any subcontract entered into under this sec-

[1] The Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7), provides that certain contracts over $2,000 entered into by any executive agency for construction, alteration, or repair (including painting or decorating) of public buildings or public works within the United States shall contain a provision to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing rates of wages as determined by the Secretary of Labor. The term "wages" as used in the Davis-Bacon Act includes the basic hourly rate of pay, the rate of contribution irrevocably made by an employer pursuant to a fund, plan, or program, and the rate of costs to the employer which may be reasonably anticipated in providing certain bona fide fringe benefits.

> tion shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration and/or repair, including painting and decorating, of a public building or public work. When requested by ERDA, any such subcontract shall be submitted for ERDA approval.

Pursuant to this provision of the contract, Argonne submits a proposal to DOE for approval including work to be done by Argonne employees (and thus, "non-covered" under the Davis-Bacon Act) and work to be done by outside contractors (and thus, "covered" under the Davis-Bacon Act). DOE then makes the final determination on which work is to be "covered" under the Davis-Bacon Act and therefore given to an outside contractor. Once it is determined that certain work on an Argonne project is "covered" by the Davis-Bacon Act, DOL makes a prevailing wage determination for those employees who are to perform the work.

It is undisputed that Argonne is not an exempt entity. However, as described above, Argonne has a close relationship with the two exempt governmental agencies, DOE and DOL. The standard for ascertaining whether the Board's assertion of jurisdiction over an employer with close ties to an exempt entity is warranted is the "right of control" test set forth in *National Transportation Service, Inc.*, 240 NLRB 565 (1979). This test requires a determination to be made as to whether the nonexempt employer retains sufficient control over its employees' terms and conditions of employment so as to be capable of collective bargaining with the employees' representative. We find that Argonne, the Employer herein, retains such control. Thus, while the Employer has entered into a contractual agreement with DOE, it retains the authority to hire, fire, lay off, and recall employees and to assign work to employees. It determines all the terms and conditions of employment and engages in collective bargaining with its employees. It retains the power to resolve grievances with its employees. Although DOE has the power to veto cost reimbursement under the contract and to approve major changes in benefit plans, it has never controlled the wages and benefits that Argonne provides its employees as a result of the collective-bargaining process. Similarly, we find that DOL has no control over the Employer's operations whatsoever. Under the contract, DOL's role is limited to setting an area wage standard once a determination has been made by DOE that certain work is "covered" under the Davis-Bacon Act.

In light of the foregoing, it is evident that the Employer has retained virtually full control over matters affecting wages, hours of employment, and working conditions, and is therefore capable of engaging in meaningful collective bargaining. Accordingly, we deny the Electrical Workers motion to dismiss and find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Local 701, IBEW, and Lodge 2458, IAM, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute involves all installation of cable tray and cable currently being performed by the Employer's technicians within an area known as the beam line, which extends between the Rapid Cycling Synchrontron (RCS) and a neutron target in connection with the Intense Pulse Neutron Source (IPNS) project at 9700 South Cass Avenue, Argonne, Illinois.

B. *Background and Facts of the Dispute*

Since 1971, the Employer's technicians have been represented by the Machinists through successive collective-bargaining agreements. Prior to the present IPNS project at Argonne, there was a similar larger project entitled the ZGS project which began in 1959 and continued until 1979. The ZGS project involved the utilization of cable tray and cable to supply power from the AC disconnects to the diagnostic equipment within the beam line area (similar to work which is that in dispute herein). At least since 1965, the Employer's technicians performed this work on the ZGS project and are assigned to perform this work on the IPNS project.

On both projects, the laying of cable tray and cable from power substations to the AC disconnects outside the beam line area has been and is done by electricians who are represented by the Electrical Workers by virtue of a collective-bargaining agreement with the resident electrical contractor.

In October 1971, Stan Perry, a business representative of the Electrical Workers, made a claim for the disputed work on the ZGS project to the Employer's attorney, George Lubben. Lubben told Perry that the Employer's people were not represented by the Electrical Workers. In mid-November 1971, Perry and Lubben had another meeting in which Lubben again informed Perry he could not have the work. In response, the Electrical

Workers attorney, Hugh Arnold, said, "We will do whatever we have to to get Argonne to give us the work even if we have to put up a picket line and get NLRB jurisdiction in the matter." There was no picketing or other action in 1971.

The IPNS project began its first phase of construction in 1979. Pursuant to its contract with DOE, the Employer submitted to DOE the different duties on the proposed project together with its recommendations for Davis-Bacon determinations. DOE found the installation of cable tray and cable from the AC disconnects to the IPNS project within the beam line area to be "non-covered" work and thus this work was given to the Employer's technicians. Under a Davis-Bacon determination issued August 12, 1980, DOE found the laying of cable tray and cable from the power substations to the AC disconnects outside the beam line area to be "covered" work and thus this work was assigned to the resident electrical contractor, who has a contract with Electrical Workers.

Rudolph Bouie, the Employer's plant manager and supervisor of the IPNS project, testified that, in November 1979, he met with the Electrical Workers present business representative, Jerry O'Conner, and other representatives from most of the major trades. At this meeting, O'Conner told Bouie that the Davis-Bacon determination on the installation of cable tray and cable from the AC disconnects to the IPNS project made no sense and he was going to get it turned around. O'Conner and Bouie had another meeting in December 1979, in which Bouie showed O'Conner the work and explained the Davis-Bacon determinations to him. O'Conner made no inquiry at either of these meetings about the wages received by the Employer's technicians.

In early March 1980, the Employer's attorney, Lubben, received letters from O'Conner and from the Operating Engineers Local 150 business representative, Paul Wood. Both letters inquired about the Employer's alleged failure to pay area standards on the project. On March 4, 1980, Lubben and Bouie met with several union representatives including O'Conner and Wood, during a regular meeting of the Depage County Building Trades Association. During the meeting, Wood made claim by the Operating Engineers for the work being done on the beam line. O'Conner then accused the Employer of failing to meet area standards. In response, Lubben accused O'Conner of using area standards as a subterfuge, disguising the fact that he had been trying to get the work for many years. O'Conner replied that he did not want to talk to Lubben anymore, that he had been at this for 9 years and was no longer going to waste his time on it.

On March 14, 1980, Operating Engineers Local 150 began picketing the Employer's entrances. Following the filing of a charge with the Board by the resident outside contractor, Power Systems, Inc., in Case 13-CD-273, Local 150 ceased picketing. The Electrical Workers then began picketing and continued to picket the Employer until April 14, 1980, when an injunction restraining such conduct was obtained. The picket signs read:

> Argonne National Laboratory
> violating area standards,
> Local 701, not an attempt
> to organize.

On March 27, 1980, Power Systems filed a charge against the Electrical Workers in Case 13-CD-275. Notices of 10(k) hearings issued for the above charges against the Electrical Workers and Operating Engineers Local 150 and the two cases were consolidated for hearing on April 14, 1980. At the hearing, both unions disclaimed interest in the disputed work and the hearing was adjourned. By a letter dated May 20, 1980, the Regional Director dismissed the charges against both unions as a result of their disclaimers.

On May 30, 1980, and July 10, 1980, due to further proposals made by the Employer, DOE issued further Davis-Bacon determinations on the IPNS project. These determinations made no change in the work assignments in dispute in this case. Nevertheless, Plant Manager Bouie met with Union Representatives O'Conner and Wood on May 30, 1980, and in mid-July 1980 to discuss the determinations. At both meetings, O'Conner expressed the view that more work on the cable tray and cable should be "covered" under the Davis-Bacon determinations and therefore assigned to the Electrical Workers. Each time, Bouie specifically informed O'Conner that there was no change from the previous Davis-Bacon determinations. Thus, the work which is the subject of the instant dispute continued to be "non-covered" and assigned to the Employer's technicians.

On October 14, 1980, Bouie was summoned to the resident construction trailer office to meet with O'Conner. Bouie again explained the Davis-Bacon determination to O'Conner but O'Conner claimed the disputed work and threatened to picket the Employer. On October 16, 1980, O'Conner met with Attorney Lubben. After telling Lubben he only cared about what the Employer's technicians get paid, O'Conner made another claim for the disputed work. O'Conner made no inquiry regarding

the technicians' wages at this meeting. After the meeting, Lubben called DOE and requested that it send a representative to observe the disputed work. Subsequently, DOE personnel observed the work and DOE reaffirmed its earlier determination that the disputed work was "non-covered." Lubben called O'Conner with this information on October 17, 1980. On October 20, 1980, Lubben received a letter from the Electrical Workers attorney, Hugh Arnold, concerning the Employer's alleged failure to pay area standards. The following morning the Electrical Workers pickets appeared along the perimeter of the Employer's property. The picket signs stated:

Local 701
Argonne National Laboratory not
meeting area standards.
No attempt to organize any employees.

The picketing continued until November 14, 1980.

C. *The Contentions of the Parties*[2]

The Employer contends that a jurisdictional dispute exists and there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It further contends that the disputed work should be awarded to employees represented by the Machinists on the basis of the parties' collective-bargaining agreement, efficiency and economy of operations, skills and safety, the Employer's past practice and current assignment of the work; and the Davis-Bacon Act determinations on the IPNS project.

The Electrical Workers contends that there is no reasonable cause to believe that it violated Section 8(b)(4)(D) of the Act because it does not claim the disputed work for the employees it represents, since the sole purpose of its picketing was to inform the public that the Employer's employees are receiving substandard wages as a result of the Davis-Bacon Act determination.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

1. It is settled law that a jurisdictional dispute no longer exists where "one of the competing unions or parties effectively renounces its claim to the work."[3] However, the record indicates that since November 1979 the Electrical Workers has claimed the work in dispute and has challenged the validity of the Davis-Bacon determinations concerning the work assignments. Thus, in November and December 1979, the Electrical Workers business representative, O'Conner, complained to the Employer's plant manager about the Davis-Bacon determinations. After a meeting with the Employer's representatives, Lubben and Bouie, on March 4, 1980, the Electrical Workers began picketing the entrances of the Employer sometime after March 14, 1980, and continuing until April 14, 1980. At the subsequent hearing on a charge filed against Electrical Workers for this conduct, the Electrical Workers disclaimed interest in the work and the hearing was adjourned. In light of the Electrical Workers disclaimer, the Regional Director dismissed these charges against Respondent on May 20, 1980.

After the above series of events, the Electrical Workers again made claims for the disputed work and threatened to picket the Employer. When the Employer confirmed that the work assignments would remain constant, the Electrical Workers again picketed the Employer from October 21, 1980, until November 14, 1980. The charge was filed in the instant case, and the Electrical Workers provided written notification to all parties that it disclaimed any interest in the disputed work as it had done in the previous case and filed a Motion To Quash the Notice of Hearing on or about November 21, 1980. The Hearing Officer referred the motion to the Board. In the circumstances presented herein, we shall not give effect to the disclaimer and we shall deny Respondent's motion.

The Board has found that a disclaimer of work in a jurisdictional dispute cannot be given effect if it appears that the charged union is engaging in the practice of a hollow disclaimer for the purpose of avoiding an authoritative decision on the merits.[4] This is precisely the situation presented here. For the second time a charge has been filed against the Electrical Workers concerning the issue herein, and for the second time it has disclaimed interest in the disputed work. After its previous disclaimer, it wasted little time to again claim interest in the disputed work. It thus appears the Workers is attempting to avoid any definitive resolution of the

[2] The Electrical Workers did not submit a brief to the Board.

[3] *N.L.R.B.* v. *Plasterers' Local Union No. 79, Operative Plasterers' and Cement Masons' International Assn., AFL-CIO [Texas State Tile and Terrazzo Co.]*, 404 U.S. 116, 134–135 (1971); see *General Building Laborers' Local Union No. 66 of the Laborers' International Union of North America (Georgia-Pacific Corporation)*, 209 NLRB 611 (1974).

[4] *Laborers' International Union of North America, Laborers' District Council of Western Pennsylvania and Local 910, AFL-CIO (Brockway Glass Company, Inc.)*, 226 NLRB 142, 143 (1976).

issues and is seeking to escape the consequences of its unlawful actions. Under these circumstances, such an empty disclaimer cannot be given effect and, therefore, the Electrical Workers motion to quash the notice of hearing is denied.

2. The Electrical Workers denies that its picketing of the Employer's IPNS project was for purposes violative of Section 8(b)(4)(D) and contends that the sole object of the picketing was to protest the substandard wages being paid to the Employer's technicians as a result of the Davis-Bacon Act determinations. In support of its position, the Electrical Workers notes that, at all times it picketed the Employer, it was advising the public that the Employer failed to pay prevailing wages as required by the Davis-Bacon Act to its employees performing certain construction work. However, while this might support a finding that *one* object of the picketing may have been to protest the Employer's wage scale, the Board must still determine whether there is reasonable cause to believe that *an* object of the picketing was also to force or require the Employer to assign the work to individuals represented by the Electrical Workers. One proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D).[5]

The evidence discloses that the Electrical Workers has continuously, through a series of meetings with Attorney Lubben and Plant Manager Bouie, asserted its claim regarding the work in dispute and orally challenged the Davis-Bacon determinations since November 1979. At each meeting with the Employer, the Electrical Workers object was to obtain the Employer's reassignment of the work in dispute to the individuals it represents by pressuring the Employer to redefine the work as "covered" under the Davis-Bacon Act. Both occasions when Respondent picketed the Employer's premises in 1980 closely followed these abortive claims for the disputed work. Additionally, there is no evidence that Respondent ever made an inquiry about the wages the Employer paid its technicians, and there is no evidence to indicate the Employer paid a substandard wage. In these circumstances, we conclude that there is reasonable cause to believe that an object of the Electrical Workers picketing was to force and require the Employer to assign the work in dispute to individuals it represents,[6] and, accordingly, we find that a jurisdictional dispute cognizable under Section 8(b)(4)(D) exists.

3. No party contends and no evidence was presented at the hearing that there exists an agreed-upon method for the voluntary resolution of the dispute which is binding on all the parties. Accordingly, we conclude that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after giving due consideration to and balancing all of the relevant factors involved.[7] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience in weighing these factors.[8]

The following factors are relevant in making a determination of the dispute before us:

1. Collective-bargaining agreement

The Employer and the Machinists have been parties to successive collective-bargaining agreements since 1971 and are parties to a current collective-bargaining agreement effective June 26, 1980. In this agreement, the Employer recognizes the Machinists as the representative of all technicians (health physics technicians and reactor operators) located at its Argonne facility. Although the contract does not specifically mention the work in dispute, in article II, section 2.4, the Employer "agrees to continue its past practices with respect to the assignment of work to employees covered by this Agreement . . . ." The disputed work falls within this category because the Employer has assigned similar work to its technicians since at least 1965. The Employer does not have a collective-bargaining agreement with the Electrical Workers. Thus, the existence of the collective-bargaining agreement between the Employer and the Machinists favors assignment of the work in dispute to the employees represented by the Machinists.

2. Employer's assignment and past practice

As mentioned above, the Employer currently assigns the disputed work to its technicians represented by the Machinists. This assignment has been the practice of the Employer at least since 1965 when the Employer was working on the ZGS project. The evidence indicates that the laying of cable trays and cable from the AC disconnects to the

[5] See *Cement Masons Local Union No. 577 (Rocky Mountain Prestress, Inc.)*, 233 NLRB 923, 924 (1977); *Painters and Drywall Finishers, Local Union No. 79, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO (Richard O'Brien Plastering Co.)*, 213 NLRB 788, 790 (1974).

[6] See *Cement Masons Local Union No. 577, supra* at 925; *Sheet Metal Workers International Association, Local Union No. 420, AFL-CIO (Rusco Building Systems, a division of Rusco Industries, Inc.)*, 198 NLRB 1207, 1209 (1972).

[7] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 523 (1961).

[8] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402, 1411 (1962).

IPNS project presently being done by its technicians is similar to the work they did on the ZGS project. The evidence further indicates that the employees of the resident electrical contractor (who are represented by the Electrical Workers) have laid the cable tray and cable from the power substations to the AC disconnects on both the ZGS and IPNS projects. Thus, the Employer's current assignment and past practice favors assignment of the work in dispute to employees represented by the Machinists.

3. Economy and efficiency of operations

While the technicians who perform the disputed work have done this work several years, the evidence shows that the procedures for installation of the cable trays and cable which is now being done by the technicians does not differ greatly from the techniques used by the Electrical Workers electricians to lay cable trays and cable from the AC disconnects to the power substations outside the beam line area. However, the evidence indicates that the technicians have a good working knowledge of the equipment, and do not require supervision because they can read blueprints for the project. The evidence also indicates that, in contrast to the electricians represented by the Electrical Workers, the technicians are permanent employees, and can maintain the beam line for the duration of the project. Thus, while electricians represented by the Electrical Workers could perform the disputed work, the factors of efficiency, continuity of the work force, and economy of operations favor assignment of the work in dispute to the employees represented by the Machinists.

4. Relative skills and safety

The evidence establishes that, in general, the employees represented by the Machinists are more highly skilled in performing the type of work in dispute than are the individuals represented by the Electrical Workers. Most of the technicians have an engineering background. The technicians are able to read the markings on the cables, work without supervision, and read the blueprints for the project. They also know how to operate, maintain, and alter their work. Nevertheless, the evidence also indicates that it takes no particular skill to lay cable trays and cable and these skills are common to electrical installation. Regarding safety, the evidence indicates that the technicians are instructed on Argonne safety and operational procedures due to the radiation dangers in the area. All Argonne personnel have their exposure to radiation closely monitored. Conversely, while the employees represented by the Electrical Workers could be instructed on safety and operation, they are more transient and therefore cannot be as closely monitored for exposure to radiation. Thus, while the difference in skills does not necessarily favor assignment of the disputed work to employees represented by either the Machinists or the Electrical Workers, the safety factors involved favor assignment of the work to employees represented by the Machinists.

5. The Davis-Bacon Act determinations

A determination was made by DOE that the disputed work is "uncovered" and thus assignable to Argonne's technicians. Pursuant to its collective-bargaining agreement with the resident electrical contractor, the Electrical Workers is performing the work DOE determined to be "covered" which is laying cable tray and cable from the power substation to the AC disconnects outside the beam line area. Thus, the determinations made under the Davis-Bacon Act favor assignment of the work to employees represented by the Machinists.

Conclusion

Upon the record as a whole, and after consideration of all relevant factors involved, we conclude that the employees of the Employer who are represented by the Machinists are entitled to perform the work in dispute. We reach this conclusion relying on the contract between the Employer and the Machinists, the Employer's past practice and present assignment of the work, efficiency, economy, and control of operations, safety, and the Davis-Bacon Act determinations. In making this determination, we are awarding the work in question to the employees who are represented by the Machinists, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of The University of Chicago d/b/a Argonne National Laboratory, who are represented by Lodge No. 2458, International Association of Machinists and Aerospace Workers, AFL–CIO, are entitled to perform the work involving all installation of cable tray and cable being performed within an area known as the beam line, which extends between the Rapid Cycling Synchrontron (RCS) and a neutron target in connection with the Intense Pulse Neutron Source (IPNS) at the locale at 9700 South Cass Avenue, Argonne, Illinois.

2. Local 701, International Brotherhood of Electrical Workers, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require The University of Chicago d/b/a Argonne National Laboratory to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 701, International Brotherhood of Electrical Workers, shall notify the Regional Director for Region 13, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner consistent with the above determination.